

Economic Impact Statement

LSA Document #15-33

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

IC 4-22-2.1-5(a) provides that an agency that intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses must prepare a statement that describes the annual economic impact of the rule on small businesses after the rule is fully implemented as described in IC 4-22-2.1-5(b). That statement must be submitted to the Office of Small Business and Entrepreneurship (OSBE). The OSBE is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

Beginning on October 1, 2013, as part of the Patient Protection and Affordable Care Act (PPACA), health insurance coverage for individuals and small businesses became available through the federal health benefit exchange (or "Marketplace") operating in Indiana. In the 2013 legislative session, P.L.278-2013, regarding the health benefit exchange, was enacted. Navigators are individuals certified to help consumers complete public health insurance program applications – namely Medicaid, Healthy Indiana Plan (HIP) 2.0, or Children's Health Insurance Program (CHIP) – or qualified health plan (QHP) applications through the federal Marketplace operating in Indiana. Application organizations are organizations that have employees or volunteers who assist individuals in completing applications for and enrollment in public health insurance programs or QHPs through the federal Marketplace. P.L.278-2013 requires navigators to obtain certification from and application organizations to register with the Indiana Department of Insurance (IDOI) before performing those functions.

The proposed rule will formalize procedures the IDOI is currently implementing to carry out P.L.278-2013. The proposed rule adds 760 IAC 4 regarding certification and registration requirements, navigator precertification education and examination, continuing education, duties, conflicts of interest, privacy and security of information, reporting requirements, enforcement, appeals and hearings, and other matters relating to a person individual acting as a navigator or an entity acting as an application organization in Indiana.

Estimated Number of Small Businesses Affected:

The proposed rule will impact individuals and entities wishing to provide services as navigators or application organizations, as defined in the proposed rule. The proposed rule will also impact individuals and entities intending to provide precertification education or continuing education courses of study to navigators, as well as certain licensed insurance producers wishing to become certified as navigators. As of January 29, 2016, IDOI has certified 1,101 navigators (with 42 pending applications), and has registered 344 application organizations (with two applications pending). The IDOI has also approved 10 navigator public precertification education programs and 10 continuing education course providers. It is unknown how many of these individuals and entities performing functions as certified navigators or registered application organizations qualify as small businesses.

Estimated Administrative Costs Imposed on Small Businesses:

The proposed rule will impose the following costs and requirements:

Navigators

Individuals seeking navigator certification are required to submit an application, along with a fee as prescribed by the Commissioner. Individuals are required to complete navigator precertification education offered by an approved program prior to taking the navigator certification examination and must submit a fee prescribed by the Commissioner for the examination. To annually renew certification, resident and nonresident navigators must submit a fee as determined by the Commissioner, along with a renewal application. Navigators must annually complete at least two hours of continuing education related to the duties of a navigator. Penalties will apply for any renewal application and fee received past the expiration date of the certification. Navigators are required to carry out certain duties, including maintaining expertise related to qualified health plans through the federal Marketplace and public health insurance programs; providing information and assistance in a fair, accurate, and impartial manner; and providing referrals to the IDOI or other appropriate persons when appropriate. Navigators must agree to follow IDOI's conflicts of interest policy and disclose all potential or actual conflicts of interest to the IDOI and to individuals prior to providing assistance. Navigators are required to maintain and protect all personal information received from individuals and must notify affected individuals and the IDOI of security breaches. Navigators must make internal privacy practices and policies available upon request by the Commissioner. Navigators must inform the IDOI of certain changes in identifying or contact information and must report certain actions taken against the navigator within 30 days of the changes or actions. Navigators in violation of IC 27-19-4 or the proposed rule are subject to a civil penalty ranging from \$50 to \$10,000 per violation. Navigators enrolled in self-study continuing education courses must comply with certain requirements. Navigators are required to retain continuing education certificates of completion for four years following the completion of the course.

Application Organizations

Application organizations are required to submit an application for application organization registration, along with a fee as prescribed by the Commissioner. To annually renew registration, application organizations must submit a fee as determined by the Commissioner, along with a renewal application. Application organizations are required to carry out certain duties, including maintaining expertise related to qualified health plans through the federal Marketplace and public health insurance programs; providing information and assistance in a fair, accurate, and impartial manner; and providing referrals to the IDOI or other appropriate persons when appropriate. Application organizations that employ navigators to perform the functions of a navigator must verify each navigator's certification status and notify the IDOI in writing of any navigator additions and removals. In addition, if an application organization revokes a navigator's association due to a violation of [IC 27-19-3](#) or the proposed rule, the application organization must submit a written report to the IDOI detailing the circumstances. Application organizations must agree to follow IDOI's conflicts of interest policy and disclose all potential or actual conflicts of interest to the IDOI and to individuals prior to providing assistance. Application organizations are required to maintain and protect all personal information received from individuals and must notify affected individuals and the IDOI of security breaches. Application organizations must make internal privacy practices and policies available upon request by the Commissioner. Application organizations must inform the IDOI of certain changes in identifying or contact information and must report certain actions taken against the application organization within 30 days of the changes or actions. Application organizations in violation of [IC 27-19-4](#) or the proposed rule are subject to a civil penalty ranging from \$50 to \$10,000 per violation.

Providers of Precertification and Continuing Education Courses and Approved Instructors

Navigator precertification education programs must be approved before providing course instruction. Precertification education program approval requires an application and a fee as determined by the Commissioner, approval by the Commissioner, and compliance with qualification requirements. In order to renew approval, the program must submit a renewal application and a renewal application fee. Programs must designate a program director who will be responsible for the program's compliance with [IC 27-19-4](#) and the proposed rule. Instruction must be provided only by an approved instructor. Current course materials for an approved precertification education program must be submitted to the Commissioner upon request, but not less frequently than once every two years. Approved instructors and approved program directors must submit an application for qualification for the Commissioner's approval, meet certain criteria, and submit a renewal application with a renewal fee to renew qualification.

Continuing education courses of study must be approved by the Commissioner before being offered to navigators. Providers of continuing education courses of study must submit an application and an application fee to the IDOI. Self-study continuing education courses are subject to certain other requirements. Providers of continuing education are required to take attendance and retain the attendance reports for four years. Providers are also required to provide each navigator who attends the course with a certificate of completion, provide duplicate certificates upon the request of the navigator for up to two years following the course, and provide the IDOI with a list of the navigators to whom it has delivered certificates of completion.

Insurance Producers

If insurance producers who do not currently sell, solicit, or negotiate qualified health plans wish to perform the functions of a certified navigator, the producer must request designation by: (1) submitting a request on a form provided by the IDOI; and (2) completing navigator precertification education. Insurance producers must also complete at least two hours of navigator continuing education each year, abide by the conflicts of interest policy and privacy and security agreement, and submit an annual renewal designation form provided by IDOI.

Estimated Total Annual Economic Impact on Small Businesses:

The estimated total annual economic impact on small businesses is difficult to quantify. Indiana navigator fees include:

- (1) Initial application fee (\$50 for Indiana residents; \$100 for nonresidents) and electronic processing fee (\$14.40) if done electronically;
- (2) Precertification education fees (may vary among different programs);
- (3) Certification examination fee (\$84.75 per exam);
- (4) Background check fee (currently \$7-17 for Indiana residents if done through the Indiana State Police);
- (5) Annual renewal application fee (\$50 for Indiana residents; \$100 for nonresidents) and electronic processing fee (\$8.63) if done electronically;
- (6) Annual continuing education course fees (may vary among different providers).

Fees associated with becoming an application organization include:

- (1) Initial application fee (\$50 for Indiana business entities; \$100 for non-Indiana business entities) and electronic processing fee (\$14.40) if done electronically; and
- (2) Annual renewal application fee (\$50 for Indiana business entities; \$100 for non-Indiana business entities) and electronic processing fee (\$7.23) if done electronically.

In addition, application organizations may also choose to pay the fees of navigators associated with the organization.

Fees associated with becoming a navigator precertification education program include:

- (1) Initial precertification education program application fees (\$50 filing fee; \$25 director fee; and \$10 instructor fee per instructor);
- (2) Online course completion filing fee (\$4 per enrollee); and
- (3) Renewal precertification education program application fees (\$50 filing fee; \$25 director fee; and \$10 instructor fee per instructor).

Navigator precertification education programs must submit renewal applications every two years.

Fees associated with becoming a navigator continuing education course of study provider include:

- (1) Initial continuing education provider application fee (\$40);
- (2) Online course completion filing fee (\$4 per enrollee); and
- (3) Renewal continuing education provider application fee (\$40).

Continuing education providers must submit renewal applications every two years.

Fees for licensed insurance producers and consultants who qualify for navigator certification include only those fees associated with precertification education, which may vary among programs.

Justification of Requirements or Costs:

Navigators, application organizations, navigator precertification education programs, and navigator continuing education providers are new to Indiana as part of the PPACA and state law. P.L.278-2013 already requires many of the components of the proposed rule. It is the duty of the IDOI to ensure that navigators and application organizations are complying with the requirements of P.L.278-2013, and more specific requirements and costs are necessary. Sections of the proposed rule are based upon requirements contained within IDOI's rules for insurance producers: [760 IAC 1-40](#) (Agent Prelicensing Study Program) and [760 IAC 1-50](#) (Continuing Education).

Regulatory Flexibility Analysis:

The department has determined that adoption of the proposed rule would be most beneficial for health benefit exchange and public health insurance programs operating in Indiana. There are no less intrusive or less costly alternative methods for achieving the purposes of the proposed rule.

Posted: 03/16/2016 by Legislative Services Agency

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